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11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 COASTAL ENVIRONMENTAL RIGHTS  
14 FOUNDATION,  
15 a non-profit corporation,

16 Plaintiff,

17 v.

18 CALIFORNIA METALS, Inc. a  
19 corporation,

20 Defendant.

Civil Case No.: '15CV0380 JM RBB

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
CIVIL PENALTIES**

**(Federal Water Pollution Control Act,  
33 U.S.C. § 1251 *et seq.*)**

1 Coastal Environmental Rights Foundation, (hereinafter referred to as “CERF” or  
2 “Plaintiff”), by and through its counsel, hereby alleges:

3 **I. JURISDICTION AND VENUE**

4 1. This is a civil suit brought under the citizen suit enforcement provisions of the  
5 Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (the “Clean Water Act”  
6 or the “CWA”). This Court has subject matter jurisdiction over the parties and this  
7 action pursuant to Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), and 28 U.S.C.  
8 § 1331 (an action for declaratory and injunctive relief arising under the Constitution and  
9 laws of the United States).

10 2. On June 27, 2014, CERF issued a 60-day notice letter (“Initial Notice Letter”)  
11 to California Metals, Inc., operating as California Metals Supply, All Computer Surplus,  
12 One Earth Recycling and Miller Metals Co, (collectively referred to as “California  
13 Metals Owners and/or Operators” or “Defendants”) regarding their violations of the  
14 Clean Water Act, and of CERF’s intention to file suit against Defendants. On August  
15 15, 2014, CERF issued a second 60-day notice letter (“Second Notice Letter”) to the  
16 California Metals Owners and/or Operators. The Initial and Second Notice Letters were  
17 sent to the registered agent, Jerry Turchin, for California Metals, Inc, as required by 40  
18 C.F.R. § 135.2(a)(2). Finally, the Initial and Second Notice Letters was sent to the  
19 Administrator of the United States Environmental Protection Agency (“EPA”), the  
20 Administrator of EPA Region IX, the Executive Director of the State Water Resources  
21 Control Board (“State Board”), the Executive Officer of the Regional Water Quality  
22 Control Board, San Diego Region (“Regional Board”) as required by CWA, 33 U.S.C. §  
23 1365(b)(1)(A). A true and correct copy of the Initial Notice Letter is attached hereto as  
24 Exhibit A and incorporated herein. A true and correct copy of the Second Notice Letter  
25 is attached hereto as Exhibit B and incorporated herein.

26 3. More than sixty days has passed since the Initial and Second Notice Letters  
27 were served on Defendants and the State and Federal agencies. Plaintiff is informed and  
28 believes, and thereon alleges, that neither the EPA nor the State of California has

1 commenced or is diligently prosecuting an action to redress the violations alleged in this  
2 complaint. (33 U.S.C. § 1365(b)(1)(B)). This action is not barred by any prior  
3 administrative penalty under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

4 4. Venue is proper in the Southern District of California pursuant to Section  
5 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the sources of the violations are  
6 located within this judicial district.

## 7 **II. INTRODUCTION**

8 5. This complaint seeks relief for the Defendants' unlawful discharge of pollutants  
9 into waters of the United States from its operations at 297 S. Marshall Avenue, El  
10 Cajon, California (hereinafter "297 S. Marshall Facility"), and from its operations 636  
11 Front Street, El Cajon, California (hereinafter "636 Front Facility") (collectively  
12 referred to as the "California Metals Facilities" or the "Sites"). Specifically, Defendants  
13 discharge storm water runoff from the Sites into storm drains, the San Diego River and  
14 ultimately the Pacific Ocean (collectively referred to as the "Receiving Waters"). This  
15 complaint also seeks relief for Defendants' violations of the filing, monitoring,  
16 reporting, discharge and management practice requirements, and other procedural and  
17 substantive requirements of California's General Permit for Discharges Associated with  
18 Industrial Activities (*National Pollution Discharge Elimination System ("NPDES")*  
19 *General Permit No. CAS000001, State Water Resources Control Board Water Quality*  
20 *Order No. 97-03-DWQ, as amended by Order No. 97-03-DWQ*) (hereinafter "Industrial  
21 Permit"). These are ongoing and continuous violations of the Clean Water Act and the  
22 Industrial Permit.

23 6. With every rainfall event, hundreds of millions of gallons of polluted rainwater,  
24 originating from industrial operations such as the California Metals Facilities, pour into  
25 the El Cajon and San Diego storm drain systems, the San Diego River and ultimately  
26 the Pacific Ocean. This discharge of pollutants in storm water from industrial activities  
27 such as the California Metals Facilities contributes to the impairment of downstream  
28 waters and compromises or destroys their beneficial uses.



1 **III. PARTIES**

2 **A. Coastal Environmental Rights Foundation**

3 7. Plaintiff CERF is a non-profit public benefit corporation organized under the  
4 laws of the State of California.

5 8. CERF's office is located at 1140 South Coast Highway 101, Encinitas  
6 California, 92024.

7 9. CERF was founded by surfers in North San Diego County and active  
8 throughout California's coastal communities. CERF was established to aggressively  
9 advocate, including through litigation, for the protection and enhancement of coastal  
10 natural resources and the quality of life for coastal residents. One of CERF's primary  
11 areas of advocacy is water quality protection and enhancement.

12 10. CERF has over 1,000 members who live and/or recreate in and around San  
13 Diego River and Pacific Ocean.

14 11. Members of CERF use and enjoy the Receiving Waters to fish, sail, boat,  
15 kayak, paddle board, surf, swim, hike, view wildlife, and engage in scientific study  
16 including monitoring activities, among other activities. Defendants' discharge pollutants  
17 from the Sites to the Receiving Waters used by CERF's members. Thus, discharges of  
18 pollutants by Defendants impair CERF's members' uses and enjoyment of the  
19 Receiving Waters.

20 12. The interests of CERF's members have been, are being, and will continue to  
21 be adversely affected by the Defendants' failure to comply with the Clean Water Act  
22 and the Industrial Permit. The relief sought herein will redress the harms to Plaintiff  
23 caused by Defendants' activities. Continuing commission of the acts and omissions  
24 alleged above will irreparably harm Plaintiff's members, for which harm they have no  
25 plain, speedy or adequate remedy at law.

26 **B. The California Metals Owners and/or Operators**

27 13. CERF is informed and believes that California Metals, Inc. ("California  
28 Metals") is a private corporation organized under the laws of the State of California, and

1 is located in El Cajon, California.

2 14. CERF is informed and believes, and thereon alleges that California Metals  
3 does business as California Metals Supply, All Computer Surplus, One Earth Recycling  
4 and Miller Metals Co and conducts industrial activities at the California Metals  
5 Facilities.

#### 6 **IV. STATUTORY BACKGROUND**

##### 7 **A. The Clean Water Act**

8 15. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the  
9 discharge of any pollutant into waters of the United States unless the discharge complies  
10 with various enumerated sections of the CWA. Among other things, Section 301(a)  
11 prohibits discharges not authorized by, or in violation of, the terms of an NPDES permit  
12 issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

13 16. Section 402(p) of the CWA establishes a framework for regulating  
14 municipal and industrial storm water discharges under the NPDES program. (33 U.S.C.  
15 § 1342(p)). States with approved NPDES permit programs are authorized by Section  
16 402(b) to regulate industrial storm water discharges through individual permits issued to  
17 dischargers and/or through the issuance of a single, statewide general permit applicable  
18 to all industrial storm water dischargers. (33 U.S.C. § 1342).

19 17. Section 402(b) of the CWA allows each state to administer its own EPA-  
20 approved permit for storm water discharges. (33 U.S.C. § 1342(b)). In California, the  
21 State Board is charged with regulating pollutants to protect California's water resources.

22 18. The Industrial Permit is a statewide general NPDES permit issued by the  
23 State Board pursuant to Section 402 of the CWA that regulates the discharge of  
24 pollutants from industrial sites. (33 U.S.C. § 1342).

25 19. Section 505(a)(1) of the CWA provides for citizen enforcement actions  
26 against any "person" who is alleged to be in violation of an "effluent standard or  
27 limitation... or an order issued by the Administrator or a State with respect to such a  
28 standard or limitation." (33 U.S.C. § 1365(a)(1)).

1        20. An action for injunctive relief under the CWA is authorized by 33 U.S.C. §  
2 1365(a).

3        21. Each separate violation of the Clean Water Act subjects the violator to a  
4 penalty of up to \$37,500 per day per violation for all violations occurring after January  
5 12, 2009. (33 U.S.C. § 1319(d); Adjustment of Civil Monetary Penalties for Inflation,  
6 40 C.F.R. §19.4).

7        22. Section 505(d) of the Clean Water Act permits prevailing parties to recover  
8 costs, including attorneys' and experts' fees. (33 U.S.C. § 1365(d)).

9        **B. California's Industrial Permit**

10       23. The Industrial Permit is an NPDES permit adopted pursuant to Section 402  
11 of the CWA, 33 U.S.C. § 1342(b) and 40 C.F.R § 123.25. In order to discharge storm  
12 water lawfully in California, industrial dischargers must secure coverage under the  
13 Industrial Permit and comply with its terms, or obtain and comply with an individual  
14 NPDES permit.

15       24. Discharge Prohibition A(1) of the General Permit prohibits the direct or  
16 indirect discharge of materials other than storm water ("non-storm water discharges"),  
17 which are not otherwise regulated by an NPDES permit, to the waters of the United  
18 States. Discharge Prohibition A(2) of the Industrial Permit prohibits storm water  
19 discharges and authorized non-storm water discharges which cause or threaten to cause  
20 pollution, contamination, or nuisance.

21       25. Effluent limitation B(3) of the Industrial Permit requires facility operators to  
22 reduce or prevent pollutants associated with industrial activity in storm water discharges  
23 and authorized non-storm water discharges through the implementation of Best  
24 Available Technology Economically Achievable ("BAT") for toxic pollutants and Best  
25 Conventional Pollutant Control Technology ("BCT") for conventional pollutants.

26       26. Receiving Water Limitation C(1) of the Industrial Permit prohibits storm  
27 water discharges and authorized non-storm water discharges to surface or groundwater  
28 that adversely impacts human health or the environment.



1        27. Receiving Water Limitation C(2) of the Industrial Permit prohibits storm  
2 water discharges and authorized non-storm water discharges that cause or contribute to  
3 an exceedance of an applicable water quality standard in a Statewide Water Quality  
4 Control Plan or the applicable Regional Board's Basin Plan.

5        28. Section A(1) and Provision E(2) of the Industrial Permit require dischargers  
6 to have developed and implemented a Storm Water Pollution Prevention Plan  
7 ("SWPPP") by October 1, 1992, or prior to beginning industrial activities, that meets all  
8 the requirements of the Industrial Permit.

9        29. The objective of the SWPPP is to identify and evaluate sources of pollutants  
10 associated with industrial activities that may affect the quality of storm water discharges  
11 from the Sites, and identify and implement site-specific Best Management Practices  
12 ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm  
13 water discharges. (Industrial Permit, Section A(2)).

14        30. To ensure its effectiveness, Section A(9) of the Industrial Permit requires the  
15 SWPPP to be evaluated on an annual basis, and it must be revised as necessary to ensure  
16 compliance with the Permit. (Industrial Permit, Section A(9), (10)).

17        31. Sections A(3) through A(10) of the Industrial Permit set forth the  
18 requirements for a SWPPP.

19        32. Section A(3) of the Industrial Permit requires the discharger to create a team  
20 to develop the SWPPP, which considers all Federal, State, and local requirements.

21        33. The SWPPP must include a site map showing the facility boundaries, storm  
22 water drainage areas with flow patterns, nearby water bodies, the location of the storm  
23 water collection, conveyance and discharge system, structural control measures, areas of  
24 actual and potential pollutant contact, and areas of industrial activity. (Industrial Permit,  
25 Section A(4)).

26        34. The SWPPP must also include a list of significant materials handled and  
27 stored at the site (Industrial Permit, Section A(5)); a description of potential pollutant  
28 sources including industrial processes, material handling and storage areas, dust and

1 particulate generating activities, and a description of significant spills and leaks, a list of  
2 all non-storm water discharges and their sources and a description of locations where  
3 soil erosion may occur (Industrial Permit, Section A(6)); and an assessment of potential  
4 pollutant sources at the facility and a description of the BMPs to be implemented at the  
5 facility that will reduce or prevent pollutants in storm water discharges and authorized  
6 non-storm water discharges, including structural BMPs where non-structural BMPs are  
7 not effective (Industrial Permit, Sections A(7) and (8)).

8 35. Provision E(3) and Section B(1) of the Industrial Permit require dischargers  
9 to prepare and implement a monitoring and reporting program ("M&RP") no later than  
10 October 1, 1992 or prior to commencing industrial activities.

11 36. The objective of the M&RP is to ensure that storm water discharges are in  
12 compliance with the Industrial Permit's Discharge Prohibitions, Effluent Limitations,  
13 and Receiving Water Limitations. (Industrial Permit, Section B(2)).

14 37. The M&RP must ensure that BMPs utilized at the facility are reducing or  
15 preventing pollutants in storm water discharges, and are evaluated whenever  
16 appropriate. (Industrial Permit, Section B(2)(a)).

17 38. Sections B(3) through B(16) of the Industrial Permit set forth the M&RP  
18 requirements.

19 39. Section B(3) of the Industrial Permit requires dischargers to conduct visual  
20 observations for the presence of unauthorized non-storm water discharges on a quarterly  
21 basis, to document the source of any discharge, and to report the presence of any  
22 discolorations, stains, odors, and floating materials in the discharge.

23 40. Section B(4) of the Industrial Permit requires dischargers to visually observe  
24 storm water discharges at all discharge locations from one storm event per month during  
25 the wet season (October 1 - May 30) and to document the presence of any floating and  
26 suspended materials, oil and grease, discolorations, turbidity, or odor in the discharge,  
27 and the source of any pollutants.

28 /./.



1        41. Sections B(3)(d) and B(4)(c) of the Industrial Permit require dischargers to  
2 maintain records of observations, observation dates, locations observed, and responses  
3 taken to eliminate unauthorized non-storm water discharges and to reduce or prevent  
4 pollutants from contacting non-storm water and storm water discharges.

5        42. Section B(5) of the Industrial Permit requires dischargers to collect a sample  
6 from all discharge points during the first storm event of the wet season and during at  
7 least one other storm event of the wet season, for a total of two samples per wet season.

8        43. Section B(5)(c) of the Industrial Permit requires dischargers to analyze each  
9 sample for pH, specific conductance, total suspended solids, total organic content, and  
10 for toxic chemicals and other pollutants likely to be present in significant quantities in  
11 the storm water discharged from the Sites.

12        44. Dischargers must submit "Annual Reports" to the Regional Board by July 1  
13 of each year. (Industrial Permit, Section B(14)).

## 14 **V. STATEMENT OF FACTS**

### 15 **A. California Metals Facilities Locations**

16        45. CERF is informed, believes, and thereon alleges that the California Metals  
17 Facilities are in the business of receiving, sorting, storing, and processing scrap metals.

18        46. CERF is informed, believes, and thereon alleges that the California Metals  
19 297 S. Marshall Facility and the 636 Front Facility conduct business as almost one  
20 facility, storing and then transferring products between the two sites interchangeably.

21        47. CERF is informed, believes, and thereon alleges that the 297 S. Marshall  
22 Facility is an approximately 38,000 square foot scrap metal recycling and processing  
23 facility. The 297 S. Marshall Facility is comprised of three separate operations: (1) a  
24 scrap yard which receives scrap metal from various commercial, industrial, and  
25 residential sources; (2) a computer surplus house where computers are broken down into  
26 parts and re-sold; (3) a new metal supply company where new metal bar, plate, and  
27 sheet stock is cut and sold. Storm water runoff flows to the southeast corner of the 297  
28 S. Marshall Facility and conveys pollution off the site and into the municipal storm

1 drains. On the west side of the 297 S. Marshall Facility, the driveway leads directly onto  
2 S. Marshall Avenue, while storm water conveyed to the southeast corner is discharged  
3 onto Millar Avenue.

4 48. CERF is informed, believes, and thereon alleges that the 636 Front Street  
5 Facility is an approximately 50,000 square foot scrap metal recycling and processing  
6 facility. It includes a large yard, an office building and several sheds. The California  
7 Metals Owners and/or Operators store scrap metal and other materials in huge piles in  
8 the scrap yard with no covering or containment. The driveway from the Site leads  
9 directly onto Front Street where the storm drains are located.

10 49. CERF is informed, believes, and thereon alleges that the California Metals  
11 Facilities are open to the public to receive and recycle scrap metal.

12 50. The California Metals Facilities discharge into storm drains that discharge  
13 into the San Diego River and ultimately the Pacific Ocean.

14 51. The EPA promulgated regulations for the Section 402 NPDES permit  
15 program defining waters of the United States. (*See* 40 C.F.R. § 122.2). The EPA  
16 interprets waters of the United States to include not only traditionally navigable waters  
17 but also other waters, including waters tributary to navigable waters, wetlands adjacent  
18 to navigable waters, and other waters including intermittent streams that could affect  
19 interstate commerce. The CWA requires any person who discharges or proposes to  
20 discharge pollutants into waters of the United States to submit an NPDES permit  
21 application. (40 C.F.R. § 122.21).

22 52. The Clean Water Act confers jurisdiction over non-navigable waters that are  
23 tributary to traditionally navigable waters where the non-navigable water at issue has a  
24 significant nexus to the navigable water. (*See Rapanos v. United States*, 547 U.S. 715  
25 (2006)). A significant nexus is established if the “[receiving waters], either alone or in  
26 combination with similarly situated lands in the region, significantly affect the chemical,  
27 physical, and biological integrity of other covered waters.” (*Id.* at 780).

28 /./

1  
2 53. A significant nexus is also established if waters that are tributary to  
3 navigable waters have flood control properties, including functions such as the  
4 reduction of flow, pollutant trapping, and nutrient recycling. (*Id.* at 783).

5 54. Information available to CERF indicates that each of the surface waters into  
6 which the California Metals Facilities discharge polluted storm water are tributaries to  
7 traditional navigable waters, such as the San Diego River and the Pacific Ocean.

8 55. CERF is informed and believes, and thereon alleges that the California  
9 Metals Facilities' polluted discharges cause and/or contribute to the impairment of water  
10 quality in the San Diego River. Elevated levels of enterococcus, fecal coliform,  
11 manganese, nitrogen, phosphorus, total dissolved solids, and toxicity, and low dissolved  
12 oxygen have resulted in the inability of the San Diego River to support its beneficial  
13 uses.

14 56. Water Quality Standards are pollutant concentration levels determined by  
15 the State Board and the EPA to be protective of the beneficial uses of the receiving  
16 waters. Discharges above Water Quality Standards contribute to the impairment of the  
17 receiving waters' beneficial uses.

18 57. The applicable Water Quality Standards include, but are not limited to, those  
19 set out by the State of California in the Criteria for Priority Toxic Pollutants, 40 C.F.R.  
20 § 131.38, ("California Toxics Rule" or "CTR") and in the Basin Plan. The CTR limits  
21 are as follows: lead – .065 milligrams per liter (mg/L); copper – .013 mg/L; zinc – .12  
22 mg/L. These numeric criteria are set to protect human health and the environment in the  
23 State of California. The CTR limits represented are the maximum concentration levels  
24 permissible to achieve health and environmental protection goals.

25 58. EPA Benchmarks are the pollutant concentrations above which EPA has  
26 determined are indicative of a facility not successfully developing or implementing  
27 BMPs that meet BAT for toxic pollutants and BCT for conventional pollutants. (See  
28 Multi-Sector General Permits for Stormwater Discharges Associated with Industrial



1 Activity (MSGP), 2008, §§6.2, 8.N). The benchmark values provide an appropriate  
 2 level to determine whether a facility's storm water pollution prevention measures are  
 3 successfully implemented. (MSGP Fact Sheet, p. 68). Failure to conduct and document  
 4 corrective action and revision of control measures in response to benchmark  
 5 exceedances constitutes a permit violation. (*Id.*).

6 59. EPA has established the following benchmark values for Sector N, Scrap  
 7 Recycling and Waste Recycling Facilities: total suspended solids – 100 mg/L; iron – 1  
 8 mg/L; aluminum – 0.75 mg/L; zinc<sup>1</sup> – 0.04-.26 mg/L; copper – 0.0038-.0332 mg/L; total  
 9 suspended solids (TSS) – 100 mg/L; lead – 0.014-.262 mg/L. (MSGP, §8.N.6).

10 60. The Regional Board's Basin Plan establishes water quality objectives,  
 11 implementation plans for point and nonpoint source discharges, and prohibitions, and  
 12 furthers statewide plans and policies intended to preserve and enhance the beneficial  
 13 uses of all waters in the San Diego region. (*See* Basin Plan at 1-1). The Basin Plan  
 14 identifies several beneficial uses for regional waters, including for the San Diego River.  
 15 (Basin Plan at Table 2-2 and 2-4). The Basin Plan establishes the following water  
 16 quality objectives for the San Diego Hydrologic Unit: iron – .3 mg/L; pH – not less than  
 17 6.5 and not greater than 8.5.

## 18 **B. The 297 S. Marshall Facility**

### 19 **i. Past and Present Industrial Activity at the 297 S. Marshall** 20 **Facility**

21 61. CERF is informed, believes, and thereon alleges that in its Notice of Intent  
 22 to Obtain Coverage under Industrial Permit submitted to the Regional Board, the  
 23 California Metals Owner and/or Operators list their operations as Standard Industrial  
 24 Classification ("SIC") code 5093 for facilities primarily engaged in assembling,  
 25 breaking up, sorting, and wholesale distribution of scrap and waste materials  
 26 (hereinafter "Scrap Metal Operation").

27  
 28 <sup>1</sup> The zinc, lead, and copper benchmarks are dependent on water hardness.

1        62. CERF is informed, believes, and thereon alleges that at the 297 S. Marshall  
2 Facility, the California Metals Owners and/or Operators engage in the following  
3 industrial operations: metal scrap recycling, vehicle maintenance and repair work,  
4 sorting, processing, crushing and baling of ferrous and non-ferrous metals, storage of  
5 scrap metals, renovations, and shipping and receiving of containers. CERF is informed,  
6 believes, and thereon alleges that the California Metals Owners and/or Operators also  
7 store, handle, and/or transport hazardous waste such as waste oil and gasoline.

8        63. The potential pollutant sources associated with the industrial activities at the  
9 297 S. Marshall Facility include, but are not limited to: the scrap metal outdoor storage  
10 areas; parking areas; shipping and receiving areas; loading and unloading areas;  
11 maintenance areas; the operations building; the scrap metal and used appliance storage  
12 areas; the piles of turnings and cuttings; and the on-site material handling equipment  
13 such as forklifts.

14        64. CERF is informed, believes, and thereon alleges that pollutants present in  
15 storm water discharged from the 297 S. Marshall Facility therefore include but are not  
16 limited to: toxic metals such as copper, iron, zinc, lead, cadmium and aluminum;  
17 petroleum products including oil, fuel, grease, transmission fluids, brake fluids,  
18 hydraulic oil and diesel fuel; chemical admixtures, battery fluids, refrigerator and other  
19 appliance fluids, acids and solvents; total suspended solids and pH-affecting substances;  
20 and fugitive and other dust, dirt and debris.

21        65. Investigators for CERF have inspected the 297 S. Marshall Facility from the  
22 public sidewalk and from the street. These investigators have photographed ongoing and  
23 continuous violations of the Industrial Permit and Clean Water Act at the 297 S.  
24 Marshall Facility.

25        66. Based upon CERF's investigation, CERF is informed and believes and  
26 thereon alleges that the California Metals 297 S. Marshall Owners and/or Operators  
27 store scrap metal and other materials in piles in the scrap yard with no covering or  
28 containment. These piles consist of, but are not limited to, scrap metal items such as

1 scrap auto parts, aluminum, crushed vehicles, and appliances such as used refrigerators,  
2 televisions, computers, barbeques, and air conditioners. Scrap metal and other materials  
3 are also stored in large uncovered bins with no secondary containment.

4 67. CERF is informed and believes and thereon alleges that there are patches of  
5 oil-contaminated dirt, grease, dripping oil, and other pollutants at the 297 S. Marshall  
6 Facility.

7 68. Based upon its investigations, CERF is informed and believes and thereon  
8 alleges that there are also metallic drums, dumpsters filled with scrap metal, and other  
9 containers stored in the operations yard that are uncovered and/or uncontained.

10 69. CERF is informed and believes and thereon alleges that the driveways at the  
11 297 S. Marshall Facility convey storm water pollution off the site and into area storm  
12 drains.

13 70. CERF is informed and believes that the driveway on the west side of the 297  
14 S. Marshall Facility along S. Marshall Avenue also lacks effective BMPs to control the  
15 flow of storm water from the operations and storage yard, and loading docks onto S.  
16 Marshall Avenue. As a result, oil and grease, metal particles, and other pollutants have  
17 been and continue to be tracked out of the 297 S. Marshall Facility's operations area  
18 onto S. Marshall Avenue and onto Millar Avenue. As noted above, large amounts of  
19 scrap materials are piled onsite, outside of cover, near and/or directly adjacent to the  
20 driveways leading onto S. Marshall Avenue. Further, dirt, oil, and grease, and other  
21 pollutants cover the floor of the operations area near or directly adjacent to the driveway  
22 leading to S. Marshall Avenue.

23 71. As a result, CERF is informed and believes and thereon alleges that during  
24 rain events at the 297 S. Marshall Facility, storm water carries pollutants from the scrap  
25 metal piles, scrap metal stacked in bins and dumpsters, floor contaminants, equipment,  
26 uncontained metal drums, and other sources directly onto S. Marshall and Millar  
27 Avenue. After periods of rainfall, storm water from the 297 S. Marshall Facility  
28 discharges directly to storm drains located on S. Marshall and Millar Avenue.



1        72. CERF is informed and believes and thereon alleges that the pollution control  
2 measures at the 297 S. Marshall Facility are ineffective in controlling the exposure of  
3 pollutant sources to storm water at the 297 S. Marshall Facility. The 297 S. Marshall  
4 Owners and/or Operators have virtually no storm water controls and BMPs in place to  
5 prevent storm water and non-storm water from contacting the pollutant sources at the  
6 storage areas, loading docks and driveways at the 297 S. Marshall Facility. No BMPs  
7 are in place to control discharges to Marshall Avenue or Millar Avenue.

8        73. Based upon its investigations, CERF is informed and believes and thereon  
9 alleges that the California Metals Owners and/or Operators have not conducted the  
10 required storm water sampling at the 297 S. Marshall Facility for the 2009-2010 and  
11 2013-2014 reporting years by failing to sample the required two storm events. CERF is  
12 informed and believes and thereon alleges that the 297 S. Marshall Facility has not  
13 conducted any of the required storm water sampling for the 2010-2011 reporting year.

14        74. CERF is informed and believes and thereon alleges that there were 46  
15 significant rain events during the 2009-2010 wet season and 48 significant rain events  
16 during the 2010-2011 wet season, during which the California Metals Owners and/or  
17 operators could have sampled the storm water. A significant rain event is defined by the  
18 EPA as a rainfall event generating 0.1 inches or more.

19                **ii. The California Metals 297 S. Marshall Facility and its Associated**  
20                **Discharge of Pollutants**

21        75. CERF is informed, believes, and thereon alleges that with every significant  
22 rain event, the California Metals 297 S. Marshall Facility discharges polluted storm  
23 water from the industrial activities at the facility via the City of El Cajon's storm drain  
24 system and into the Receiving Waters.

25        76. CERF is informed, believes, and thereon alleges that the Receiving Waters  
26 into which the California Metals 297 S. Marshall Facility discharges polluted storm  
27 water are waters of the United States and therefore the Industrial Permit properly  
28 regulates discharges to those waters.

1 77. Because discharges from the California Metals 297 S. Marshall Facility  
2 contain metals and acidic pH, the California Metals 297 S. Marshall Facility's polluted  
3 discharges cause and/or contribute to the impairment of water quality in the Receiving  
4 Waters.

5 78. CERF is informed, believes, and thereon alleges that the storm water  
6 discharged from the Defendants' 297 S. Marshall Facility has exceeded the Benchmark  
7 value for copper established by the EPA as well as the CTR Water Quality Standards  
8 applicable to copper in California. For example, Defendants' annual report monitoring  
9 data indicates levels of copper at 110 mg/L which is more than 3,300 times the EPA  
10 Benchmark of 0.0332 mg/L.<sup>2</sup> (MSGP, § 8.N.6). This reading is also more than 8,400  
11 times the copper CTR limit of 0.013 mg/L.

12 79. CERF is informed, believes, and thereon alleges that the storm water  
13 discharged from the Defendants' 297 S. Marshall Facility has exceeded the CTR Water  
14 Quality Standards applicable to lead in California. For example, Defendants' annual  
15 report monitoring data indicates levels of lead at 25 mg/L which is more than 384 times  
16 the CTR limit of .065 mg/L. This reading is also more than 95 times the EPA  
17 Benchmark value for lead of .262 mg/L.<sup>3</sup> (MSGP, § 8.N.6).

18 80. CERF is informed, believes, and thereon alleges that the storm water  
19 discharged from the Defendants' 297 S. Marshall Facility has exceeded the CTR Water  
20 Quality Standards applicable to zinc in California. For example, Defendants' annual  
21 report monitoring data indicates levels of zinc at 410 mg/L which is more than 3400  
22 times the CTR limit of .12 mg/L. This reading is also more than 1576 times the EPA  
23 Benchmark value for zinc of .26 mg/L.<sup>4</sup> (MSGP, § 8.N.6).

24 /././

25 \_\_\_\_\_  
26 <sup>2</sup> This benchmark value is hardness-dependent. Assuming the highest water hardness range applies, the benchmark is .0332  
mg/L.

27 <sup>3</sup> This benchmark value is hardness-dependent. Assuming the highest water hardness range applies, the benchmark is .262  
mg/L.

28 <sup>4</sup> This benchmark value is hardness-dependent. Assuming the highest water hardness range applies, the benchmark is .26  
mg/L.

1  
2 81. CERF is informed, believes, and thereon alleges that the storm water  
3 discharged from the Defendants' 297 S. Marshall Facility has exceeded the Basin Plan  
4 Water Quality Standards applicable to iron in California. For example, Defendants'  
5 annual report monitoring data indicates levels of iron at 1,900 mg/L which is more than  
6 6,300 times the Basin Plan limit of .3 mg/L. This reading is also more than 1,900 times  
7 the EPA Benchmark value for iron of 1.0 mg/L.<sup>5</sup> (MSGP, § 8.N.6).

8 82. CERF is informed, believes, and thereon alleges that the storm water  
9 discharged from the Defendants' 297 S. Marshall Facility has exceeded the Basin Plan  
10 Water Quality Standards applicable to pH in California. For example, Defendants'  
11 annual report monitoring data indicates pH levels at 1.9 which is more than 40 times the  
12 Basin Plan lower limit of 6.5.

13 83. CERF is informed, believes, and thereon alleges that the storm water  
14 discharged from the Defendants' 297 S. Marshall Facility has exceeded the EPA  
15 Benchmark value for aluminum. For example, Defendants' annual report monitoring  
16 data indicates levels of aluminum at 1,300 mg/L which is more than 1,730 times the  
17 EPA Benchmark value for aluminum of .75 mg/L. (MSGP, § 8.N.6).

18 84. CERF is informed, believes, and thereon alleges that the storm water  
19 discharged from Defendants' 297 S. Marshall Facility has exceeded the EPA  
20 Benchmark value for Total Suspended Solids (TSS). For example, Defendants' annual  
21 report monitoring data indicates levels of TSS at 230 mg/L which is more than 2.3  
22 times the EPA Benchmark value for TSS of 100mg/L. (MSGP, § 8.N.6).

23 85. CERF is informed, believes, and thereon alleges that during every  
24 significant rain event that has occurred at the California Metals 297 S. Marshall Facility  
25 since June 27, 2009 through the present, Defendants have discharged and continue to  
26 discharge storm water from the California Metals 297 S. Marshall Facility that contains  
27

28 <sup>5</sup> This benchmark value is hardness-dependent. Assuming the highest water hardness range applies, the benchmark is .26 mg/L.



1 pollutants at levels in violation of the prohibitions and limitations set forth in the  
2 Industrial Permit and other applicable Water Quality Standards.

3 86. CERF is informed, believes, and thereon alleges from visual observations,  
4 sample results, and investigations available to CERF that the California Metals Owners  
5 and/or Operators have failed and continue to fail to develop and/or implement adequate  
6 BMPs to prevent the discharge of polluted storm water from the California Metals 297  
7 S. Marshall Facility. The inadequacy of the BMPs at the California Metals 297 S.  
8 Marshall Facility is a result of the California Metals Owners and/or Operators' failure to  
9 develop and implement an adequate SWPPP and companion M&RP for this Site.  
10 Therefore, storm water discharges from the California Metals 297 S. Marshall Facility  
11 contain pollutant concentration levels that are consistently above both EPA Benchmarks  
12 and applicable Water Quality Standards.

13 87. CERF is informed, believes, and thereon alleges that since at least June 27,  
14 2009 through the present, Defendants have failed to develop and implement BMPs that  
15 meet the standards of BAT/BCT at the California Metals 297 S. Marshall Facility in  
16 violation of Effluent Limitation B(3) of the Industrial Permit. Each day that Defendants  
17 have failed and continue to fail to implement adequate BMPs to achieve BAT/BCT  
18 constitutes a separate violation of the Industrial Permit and the CWA.

19 88. Based on its investigation of the California Metals 297 S. Marshall Facility,  
20 CERF is informed and believes that Defendants have failed to develop and implement  
21 an adequate SWPPP since at least June 27, 2009 through the present. Each day that  
22 Defendants have failed and continue to fail to implement an adequate SWPPP  
23 constitutes a separate violation of the Industrial Permit and the CWA.

24 89. Based on its investigation of the California Metals 297 S. Marshall Facility,  
25 CERF is informed and believes that Defendants have failed to develop and implement  
26 an adequate M&RP since at least June 27, 2009 through the present. Each day that  
27 Defendants have failed and continue to fail to implement an adequate M&RP constitutes  
28 a separate violation of the Industrial Permit and the CWA.

1        90. CERF is informed and believes that Defendants have not successfully  
2 sampled and reported during the 2009-2010, 2010-2011 and 2013-2014 wet seasons,  
3 despite there being numerous rain events sufficient to generate runoff occurring during  
4 the business hours at the California Metals 297 S. Marshall Facility. Accordingly, the  
5 California Metals Owners and/or Operators have violated the Industrial Permit and the  
6 CWA for failing to sample and report as required, or for falsely reporting that no  
7 discharges occurred that they could have sampled.

8        91. CERF is informed and believes that Defendants have failed to submit true  
9 and correct annual reports to the Regional Board by July 1 of 2010 in violation of  
10 Section B(14) of the Industrial Permit. Each day that Defendants have operated the  
11 California Metals 1760 Facility without meeting this reporting requirement of the Permit  
12 constitutes a separate violation of the Industrial Permit and the CWA.

13        92. CERF is informed and believes that Defendants have failed to submit written  
14 reports to the Regional Board identifying additional BMPs necessary to achieve  
15 BAT/BCT at the California Metals 297 S. Marshall Facility since at least June 27, 2009  
16 in violation of Receiving Water Limitations C(3) and C(4). Each day that Defendants  
17 have operated the California Metals 297 S. Marshall Facility without meeting this  
18 reporting requirement of the Industrial Permit constitutes a separate violation of the  
19 Industrial Permit and the CWA.

20        93. CERF is informed and believes that since at least June 27, 2009, Defendants  
21 have failed to submit written reports to the Regional Board that address Defendants'  
22 non-compliance with the terms of the Industrial Permit in violation of Section C(11)(d)  
23 of the Permit. Each day that Defendants have operated the California Metals 297 S.  
24 Marshall Facility without meeting this reporting requirement of the Industrial Permit  
25 constitutes a separate violation of the General Industrial Permit and the CWA.

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27 ///

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**C. The California Metals 636 Front Street Facility**

**i The California Metals 636 Front Street Facility's Past and Present Industrial Activities**

94. In their Notice of Intent to Obtain Coverage under Industrial Permit submitted to the Regional Board, California Metals, Inc. lists its operations as SIC code 5093 for facilities primarily engaged in assembling, breaking up, sorting, and wholesale distribution of scrap and waste materials.

95. CERF is informed, believes, and thereon alleges that the California Metals 636 Front Facility Owners and/or Operators engage in the following industrial operations: metal scrap recycling, fueling, vehicle maintenance and repair work, sorting and processing of ferrous and non-ferrous metals, storage of scrap metals, car body smashing, industrial roll-off service, and shipping and receiving of scrap metals. The California Metals 636 Front Owners and/or Operators also store, handle, and/or transport hazardous waste such as waste oil and gasoline.

96. CERF is informed, believes, and thereon alleges that the potential sources of pollutants associated with the industrial activities at the California Metals 636 Front Facility include, but are not limited to: the scrap metal ferrous and non-ferrous outdoor storage areas; parking areas; shipping and receiving areas; loading and unloading areas; maintenance areas; the operations building; the scrap metal and used appliance storage areas; the piles of ferrous and non-ferrous turnings and cuttings; and the on-site material handling equipment such as forklifts.

97. CERF is informed, believes, and thereon alleges that the pollutants associated with the California Metals 636 Front Facility include but are not limited to: toxic metals such as copper, iron, zinc, lead, cadmium and aluminum; petroleum products including oil, fuel, grease, transmission fluids, brake fluids, hydraulic oil and diesel fuel; chemical admixtures, battery fluids, refrigerator and other appliance fluids, acids and solvents; total suspended solids and pH-affecting substances; and fugitive and other dust, dirt and debris.



1           98. Investigators for CERF have inspected the California Metals 636 Front  
2 Facility from the public sidewalk and from the street. These investigators have  
3 photographed ongoing and continuous violations of the Industrial Permit and the CWA  
4 at the California Metals 636 Front Facility as described in the Notice Letter and this  
5 complaint.

6           99. CERF's investigation has revealed that the California Metals Owners and/or  
7 Operators store scrap metal and other materials in huge piles in the scrap yard with no  
8 covering or containment. CERF is informed, believes, and thereon alleges that these  
9 piles consist of, but are not limited to, metal turnings and shavings, scrap auto parts,  
10 crushed vehicles and vehicle body parts, radiators, electronics and appliances such as  
11 used refrigerators, washing machines, air conditioners, and the like. Scrap metal and  
12 other materials are stored in large piles and uncovered bins with no secondary  
13 containment.

14           100. CERF is informed, believes, and thereon alleges that a layer of oil-  
15 contaminated dirt and other pollutants covers the ground and is tracked throughout the  
16 California Metals 636 Front Facility.

17           101. CERF is informed, believes, and thereon alleges that there are 55-gallon  
18 drums and other containers located at the California Metals 636 Front Facility that are  
19 uncovered and uncontained.

20           102. CERF is informed, believes, and thereon alleges that the California Metals  
21 636 Front Facility yard is paved, and dirt, debris, and staining from spills of petroleum  
22 and other pollutants cover the pavement at the California Metals 636 Front Facility.

23           103. CERF is informed, believes, and thereon alleges that the driveway from the  
24 operations yard leads directly onto Front Street. The California Metals Owners and/or  
25 Operators have not installed any BMPs on the driveways to prevent pollutants from  
26 leaving the operations yard, loading areas, the driveway as well as other ingress and  
27 egress points leading onto Front Street. As a result, oil and grease, metal particles, and  
28

1 other pollutants have been and continue to be tracked out of the California Metals 636  
2 Front Facility's operations area onto Front Street.

3 104. CERF is informed, believes, and thereon alleges that large amounts of scrap  
4 materials are piled in the operations area, outside of cover, near and/or directly adjacent  
5 to driveways leading onto Front Street.

6 105. CERF is informed, believes, and thereon alleges that dirt, oil and grease,  
7 scrap metal pieces, and other pollutants litter the floor of the operations area near or  
8 directly adjacent to the driveway leading to Front Street. As a result, during rain events,  
9 storm water carries pollutants from the scrap metal piles, scrap metal stacked in bins,  
10 floor contaminants, equipment, and other sources directly onto Front Street. After  
11 periods of rainfall, storm water from the California Metals 636 Front Facility discharges  
12 directly to storm drains located on Front Street.

13 106. CERF is informed, believes, and thereon alleges that the pollution control  
14 measures at the California Metals 636 Front Facility are ineffective in controlling the  
15 exposure of pollutant sources to storm water at the California Metals 636 Front Facility.  
16 The California Metals Owners and/or Operators have virtually no storm water controls  
17 or BMPs in place to prevent storm water and non-storm water from contacting the  
18 pollutant sources at the storage areas, loading docks and driveways at the California  
19 Metals 636 Front Facility. No BMPs are in place to control discharges to Front Street,  
20 which constitute the vast majority of discharges from the California Metals 636 Front  
21 Facility.

22 107. CERF is informed, believes, and thereon alleges that the California Metals  
23 Owners and/or Operators have not conducted adequate storm water sampling at the  
24 California Metals 636 Front Facility for the 2009-2010, 2010-2011 and 2013-2014 wet  
25 seasons and reporting years, despite the requirement that it conduct such sampling  
26 during no less than two storm events every wet season.

27 108. CERF is informed, believes, and thereon alleges that based on both the  
28 evidence from visual observations and CERF's investigations that the California Metals

1 Owners and/or Operators have failed and continue to fail to develop and/or implement  
2 adequate BMPs to prevent the discharge of polluted storm water and non-storm water  
3 from the California Metals 636 Front Facility.

4 **ii. The California Metals 636 Front Facility's Discharge of Pollutants**

5 109. CERF is informed, believes, and thereon alleges that with every significant  
6 rain event, the California Metals 636 Front Facility discharges polluted storm water  
7 from the industrial activities at the facility via the City of El Cajon's storm drain system  
8 and into the Receiving Waters.

9 110. CERF is informed, believes, and thereon alleges that the Receiving Waters  
10 into which the California Metals 636 Front Facility discharges polluted storm water are  
11 waters of the United States and therefore the Industrial Permit properly regulates  
12 discharges to those waters.

13 111. Because discharges from the California Metals 636 Front Facility contain  
14 metals and high pH, the California Metals 636 Front Street Facility's polluted  
15 discharges cause and/or contribute to the impairment of water quality in these  
16 Receiving Waters.

17 112. CERF is informed, believes, and thereon alleges that the storm water  
18 discharged from Defendants' 636 Front Facility has exceeded the Benchmark value for  
19 copper established by the EPA as well as the CTR Water Quality Standards applicable  
20 to copper in California. For example, Defendants' annual report monitoring data  
21 indicates levels of copper at 3,600 mg/L which is more than 108,000 times the EPA  
22 Benchmark of 0.0332 mg/L.<sup>6</sup> (MSGP, § 8.N.6). This reading is also more than 276,000  
23 times the copper CTR limit of 0.013 mg/L.

24 113. CERF is informed, believes, and thereon alleges that the storm water  
25 discharged from Defendants' 636 Front Facility has exceeded the CTR Water Quality  
26 Standards applicable to lead in California. For example, Defendants' annual report  
27

28 <sup>6</sup> This benchmark value is hardness-dependent. Assuming the highest water hardness range applies, the benchmark is .0332 mg/L.

1 monitoring data indicates levels of lead at 690 mg/L which is more than 10,600 times  
2 the CTR limit of .065 mg/L. This reading is also more than 2,600 times the EPA  
3 Benchmark value for lead of .262 mg/L.<sup>7</sup> (MSGP, § 8.N.6).

4 114. CERF is informed, believes, and thereon alleges that the storm water  
5 discharged from the Defendants' 636 Front Facility has exceeded the CTR Water  
6 Quality Standards applicable to zinc in California. For example, Defendants' annual  
7 report monitoring data indicates levels of zinc at 2,700 mg/L which is more than 22,500  
8 times the CTR limit of .12 mg/L. This reading is also more than 10,380 times the EPA  
9 Benchmark value for zinc of .26 mg/L.<sup>8</sup> (MSGP, § 8.N.6).

10 115. CERF is informed, believes, and thereon alleges that the storm water  
11 discharged from the Defendants' 636 Front Facility has exceeded the Basin Plan Water  
12 Quality Standards applicable to iron in California. For example, Defendants' annual  
13 report monitoring data indicates levels of iron at 7,400 mg/L which is more than 24,600  
14 times the Basin Plan limit of .3 mg/L. This reading is also more than 7,400 times the  
15 EPA Benchmark value for iron of 1.0 mg/L.<sup>9</sup> (MSGP, § 8.N.6).

16 116. CERF is informed, believes, and thereon alleges that the storm water  
17 discharged from the Defendants' 636 Front Facility has exceeded the Basin Plan Water  
18 Quality Standards applicable to pH in California. For example, Defendants' annual  
19 report monitoring data indicates pH levels at 8.7, which is more than the Basin Plan  
20 upper limit of 8.5.

21 117. CERF is informed, believes, and thereon alleges that the storm water  
22 discharged from Defendants' 636 Front Facility has exceeded the EPA Benchmark  
23 value for aluminum. For example, Defendants' annual report monitoring data indicates  
24

25  
26 <sup>7</sup> This benchmark value is hardness-dependent. Assuming the highest water hardness range applies, the benchmark is .262 mg/L.

27 <sup>8</sup> This benchmark value is hardness-dependent. Assuming the highest water hardness range applies, the benchmark is .26 mg/L.

28 <sup>9</sup> This benchmark value is hardness-dependent. Assuming the highest water hardness range applies, the benchmark is .26 mg/L.



1 levels of aluminum at 4,700 mg/L which is more than 6,260 times the EPA Benchmark  
2 value for aluminum of .75 mg/L. (MSGP, § 8.N.6).

3 118. CERF is informed, believes, and thereon alleges that the storm water  
4 discharged from Defendants' 636 Front Facility has exceeded the EPA Benchmark  
5 value for Total Suspended Solids (TSS). For example, Defendants' annual report  
6 monitoring data indicates levels of TSS at 330 mg/L which is more than 3 times the  
7 EPA Benchmark value for TSS of 100mg/L. (MSGP, § 8.N.6).

8 119. CERF is informed, believes, and thereon alleges that during every  
9 significant rain event that has occurred at the California Metals 636 Front Facility since  
10 June 27, 2009 through the present, Defendants have discharged and continue to  
11 discharge storm water from the California Metals 636 Front Facility that contains  
12 pollutants at levels in violation of the prohibitions and limitations set forth in the  
13 Industrial Permit and other applicable Water Quality Standards.

14 120. CERF is informed, believes, and thereon alleges from visual observations,  
15 sample results, and investigations available to CERF that the California Metals Owners  
16 and/or Operators have failed and continue to fail to develop and/or implement adequate  
17 BMPs to prevent the discharge of polluted storm water from the California Metals 636  
18 Front Facility. The inadequacy of the BMPs at the California Metals 636 Front Facility  
19 is a result of the California Metals Owners and/or Operators' failure to develop and  
20 implement an adequate SWPPP and companion M&RP for the California Metals 636  
21 Front Facility. Therefore, storm water discharges from the California Metals 636 Front  
22 Facility contain pollutant concentration levels that are consistently above both EPA  
23 Benchmarks and applicable Water Quality Standards.

24 121. CERF is informed, believes, and thereon alleges that since at least June 27,  
25 2009 through the present, Defendants have failed to develop and implement BMPs that  
26 meet the standards of BAT/BCT at the California Metals 636 Front Facility in violation  
27 of Effluent Limitation B(3) of the Industrial Permit. Each day that Defendants have  
28 failed and continue to fail to implement adequate BMPs to achieve BAT/BCT

1 constitutes a separate violation of the Industrial Permit and the CWA.

2 122. Based on its investigation of the California Metals 636 Front Facility, CERF  
3 is informed and believes that Defendants have failed to develop and implement an  
4 adequate SWPPP since at least June 27, 2009 through the present. Each day that  
5 Defendants have failed and continue to fail to implement an adequate SWPPP  
6 constitutes a separate violation of the Industrial Permit and the CWA.

7 123. Based on its investigation of the California Metals 636 Front Facility, CERF  
8 is informed and believes that Defendants have failed to develop and implement an  
9 adequate M&RP since at least June 27, 2009 through the present. Each day that  
10 Defendants have failed and continue to fail to implement an adequate M&RP  
11 constitutes a separate violation of the Industrial Permit and the CWA.

12 124. CERF is informed and believes that Defendants have not successfully  
13 sampled and reported during the 2009-2010, 2010-2011 and 2013-2014 wet seasons,  
14 despite there being numerous rain events sufficient to generate runoff occurring during  
15 business hours at the California Metals 636 Front Facility. Accordingly, the California  
16 Metals Owners and/or Operators have violated the Industrial Permit and the CWA for  
17 failing to sample and report as required, or for falsely reporting that no discharges  
18 occurred that they could have sampled.

19 125. CERF is informed and believes that Defendants have failed to submit true  
20 and correct annual reports to the Regional Board by July 1 of 2010 in violation of  
21 Section B(14) of the Industrial Permit. Each day that Defendants have operated the  
22 California Metals 636 Front Facility without meeting this reporting requirement of the  
23 Permit constitutes a separate violation of the Industrial Permit and the CWA.

24 126. CERF is informed and believes that Defendants have failed to submit written  
25 reports to the Regional Board identifying additional BMPs necessary to achieve  
26 BAT/BCT at the California Metals 636 Front Facility since at least June 27, 2009 in  
27 violation of Receiving Water Limitations C(3) and C(4). Each day that Defendants have  
28 operated the California Metals 636 Front Facility without meeting this reporting

1 requirement of the Industrial Permit constitutes a separate violation of the Industrial  
2 Permit and the CWA.

3 127. CERF is informed and believes that since at least June 27, 2009, Defendants  
4 have failed to submit written reports to the Regional Board that address Defendants'  
5 non-compliance with the terms of the Industrial Permit in violation of Section C(11)(d)  
6 of the Permit. Each day that Defendants have operated the California Metals 636 Front  
7 Facility without meeting this reporting requirement of the Industrial Permit constitutes a  
8 separate violation of the General Industrial Permit and the CWA.

9 **D. California Metals Owners and/or Operators Monitoring Program**

10 128. CERF is informed and believes that the California Metals Facilities are  
11 required to sample at least two storm events every rainy season in accordance with the  
12 sampling and analysis procedures set forth at Section B(5). These procedures require  
13 that a sample be taken from all discharge locations at the California Metals Facilities  
14 and that at least two samples are taken during the wet season: (1) one in the first storm  
15 event of a particular wet season; and (2) at least one other storm event in the wet  
16 season. (Industrial Permit, Sections B(5) and B(7)).

17 129. CERF is informed and believes that despite the extremely high levels of  
18 pollutants reported in the samples that were taken at the California Metals Facilities, the  
19 California Metals Owners and/or Operators have not sampled as required.

20 130. CERF is informed and believes, and thereon alleges that efforts were not  
21 made to take all required samples at all the required locations at the California Metals  
22 Facilities in 2009-2010, 2010-2011 and 2013-2014 sampling years.

23 131. CERF is informed and believes, and thereon alleges that, as a result of  
24 Defendants' failure to evaluate the effectiveness of their existing BMPs, their failure to  
25 implement BAT and BCT at the California Metals Facilities, their failure to fully  
26 monitor the quality of storm water discharges from the California Metals Facilities, and  
27 their failure to maintain an adequate SWPPP and monitoring program for the Facility,  
28 storm water containing pollutants harmful to fish, plant and bird life, and human health

1 is being discharged during every rain event from the Facility directly to storm channels  
2 or drains that flow into the Receiving Waters.

3 132. Information available to Plaintiff indicates that Defendants have not  
4 submitted any reports pursuant to Receiving Water Limitation C(4)(a) within 60-days of  
5 becoming aware of levels in their storm water exceeding the EPA Benchmark values or  
6 applicable Water Quality Standards. Information available to Plaintiff indicates that  
7 Defendants have not filed any reports describing the California Metals Facilities'  
8 noncompliance with the Industrial Permit pursuant to Section C(11)(d) of the Industrial  
9 Permit.

10 133. Information available to Plaintiff indicates that Defendants have not fulfilled  
11 the requirements set forth in the Industrial Permit for discharges from the California  
12 Metals Facilities due to their continued discharge of contaminated storm water.  
13 Information available to Plaintiff indicates the continued existence of unlawful storm  
14 water and non-storm water discharges at the California Metals Facilities.

15 **VI. CLAIMS FOR RELIEF**

16 **FIRST CAUSE OF ACTION**

17 **Discharges of Contaminated Storm Water in**  
18 **Violation of the Industrial Permit's Discharge Prohibitions and**  
19 **Receiving Water Limitations and the Clean Water Act**  
**(Violations of 33 U.S.C. §§ 1311(a), 1342)**

20 **A. California Metals 297 S. Marshall Facility**

21 134. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

22 135. Plaintiff is informed and believes, and thereon alleges, that as a result of the  
23 operations at the California Metals 297 S. Marshall Facility, during every significant  
24 rain event, storm water containing pollutants harmful to fish, plant, bird life, and human  
25 health is discharged from the California Metals 1760 Facility to the Receiving Waters.

26 136. Plaintiff is informed and believes, and thereon alleges, that the Defendants'  
27 discharges of contaminated storm water have caused and continue to cause pollution,  
28



1 contamination, and/or nuisance to the waters of the United States in violation of  
2 Discharge Prohibition A(2) of the Industrial Permit.

3 137. Plaintiff is informed and believes, and thereon alleges, that these discharges  
4 of contaminated storm water have, and continue to, adversely affect human health and  
5 the environment in violation of Receiving Water Limitation C(1) of the Industrial  
6 Permit.

7 138. Plaintiff is informed and believes, and thereon alleges, that these discharges  
8 of contaminated storm water have caused or contributed to and continue to cause or  
9 contribute to an exceedance of Water Quality Standards in violation of Receiving Water  
10 Limitation C(2) of the Industrial Permit.

11 139. Plaintiff is informed and believes, and thereon alleges, that from at least  
12 June 27, 2009 through the present, Defendants have discharged, and continue to  
13 discharge, contaminated storm water from the California Metals 297 S. Marshall  
14 Facility to Receiving Waters in violation of the prohibitions of the Industrial Permit.  
15 Thus, the California Metals Owners and/or Operators are liable for civil penalties for 40  
16 violations of the Industrial Permit and the CWA.

17 140. Plaintiff is informed and believes, and thereon alleges, that Defendants'  
18 violations of the Industrial Permit and the CWA are ongoing.

19 141. Defendants will continue to be in violation of the Industrial Permit  
20 requirements each day the California Metals 297 S. Marshall Facility discharges  
21 contaminated storm water in violation of Industrial Permit prohibitions.

22 142. Every day that Defendants have discharged and/or continue to discharge  
23 polluted storm water from the California Metals 297 S. Marshall Facility in violation of  
24 the Industrial Permit is a separate and distinct violation of Section 301(a) of the CWA,  
25 33 U.S.C. § 1311(a).

26 143. By committing the acts and omissions alleged above, Defendants are subject  
27 to an assessment of civil penalties for each and every violation of the CWA occurring  
28 from June 27, 2009, to the present pursuant to Sections 309(d) and 505 of the CWA, 33

1 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for  
2 Inflation, 40 C.F.R. §12.4.

3 144. An action for injunctive relief under the CWA is authorized by 33 U.S.C. §  
4 1365(a). Continuing commission of the acts and omissions alleged above would  
5 irreparably harm Plaintiff and the citizens of the State of California, for which harm  
6 they have no plain, speedy, or adequate remedy at law.

7 Wherefore, Plaintiff prays judgment against the Defendants as set forth hereafter.

8 **B. California Metals 636 Front Facility**

9 145. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

10 146. Plaintiff is informed and believes, and thereon alleges, that as a result of the  
11 operations at the California Metals 636 Front Facility, during every significant rain  
12 event, storm water containing pollutants harmful to fish, plant, bird life, and human  
13 health is discharged from the California Metals 636 Front Facility to the Receiving  
14 Waters.

15 147. Plaintiff is informed and believes, and thereon alleges, that the Defendants'  
16 discharges of contaminated storm water have caused and continue to cause pollution,  
17 contamination, and/or nuisance to the waters of the United States in violation of  
18 Discharge Prohibition A(2) of the Industrial Permit.

19 148. Plaintiff is informed and believes, and thereon alleges, that these discharges  
20 of contaminated storm water have, and continue to, adversely affect human health and  
21 the environment in violation of Receiving Water Limitation C(1) of the Industrial  
22 Permit.

23 149. Plaintiff is informed and believes, and thereon alleges, that these discharges  
24 of contaminated storm water have caused or contributed to and continue to cause or  
25 contribute to an exceedance of Water Quality Standards in violation of Receiving Water  
26 Limitation C(2) of the Industrial Permit.

27 150. Plaintiff is informed and believes, and thereon alleges, that from at least  
28 June 27, 2009, through the present, Defendants have discharged, and continue to

1 discharge, contaminated storm water from the California Metals 636 Front Facility to  
2 Receiving Waters in violation of the prohibitions of the Industrial Permit. Thus, the  
3 California Metals Owners and/or Operators are liable for civil penalties for 37 violations  
4 of the Industrial Permit and the CWA.

5 151. Plaintiff is informed and believes, and thereon alleges, that Defendants'  
6 violations of the Industrial Permit and the CWA are ongoing.

7 152. Defendants will continue to be in violation of the Industrial Permit  
8 requirements each day the California Metals 636 Front Facility discharges contaminated  
9 storm water in violation of Industrial Permit prohibitions.

10 153. Every day that Defendants have discharged and/or continue to discharge  
11 polluted storm water from the California Metals 636 Front Facility in violation of the  
12 Industrial Permit is a separate and distinct violation of Section 301(a) of the CWA, 33  
13 U.S.C. § 1311(a).

14 154. By committing the acts and omissions alleged above, Defendants are subject  
15 to an assessment of civil penalties for each and every violation of the CWA occurring  
16 from June 27, 2009, to the present pursuant to Sections 309(d) and 505 of the CWA, 33  
17 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for  
18 Inflation, 40 C.F.R. §12.4.

19 155. An action for injunctive relief under the CWA is authorized by 33 U.S.C. §  
20 1365(a). Continuing commission of the acts and omissions alleged above would  
21 irreparably harm Plaintiff and the citizens of the State of California, for which harm  
22 they have no plain, speedy, or adequate remedy at law.

23 Wherefore, Plaintiff prays judgment against the Defendants as set forth hereafter.

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**SECOND CAUSE OF ACTION**

**Failure to Develop and/or Implement BMPs that Achieve Compliance with Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology In Violation of the Industrial Permit and the Clean Water Act (Violations of 33 U.S.C. §§1311, 1342)**

**A. California Metals 297 S. Marshall Facility**

156. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

157. Plaintiff is informed and believes, and thereon alleges that Defendants have failed to develop and/or implement BMPs that achieve compliance with BAT/BCT requirements of the Industrial Permit and the CWA.

158. Sampling of the California Metals 297 S. Marshall Facility's storm water discharges as well as CERF's observations and photographs of the California Metals 297 S. Marshall Facility demonstrate that the California Metals Owners and/or Operators have not developed and/or implemented BMPs that meet the standards of BAT/BCT. Thus, the California Metals Owners and/or Operators are in violation of Effluent Limitation (B)(3) of the Industrial Permit.

159. Plaintiff is informed and believes and thereon alleges that Defendants have been in daily and continuous violation of the BAT/BCT requirements of the Industrial Permit and the CWA every day since at least June 27, 2009.

160. Plaintiff is informed and believes and thereon alleges that Defendants' violations of the Industrial Permit Effluent Limitations and the CWA are ongoing.

161. Defendants will continue to be in violation every day the California Metals 297 S. Marshall facility operates without adequately developing and/or implementing BMPs that achieve BAT/BCT to prevent or reduce pollutants associated with industrial activity in storm water discharges at the California Metals 297 S. Marshall Facility.

162. Every day that Defendants operate the California Metals 297 S. Marshall Facility without adequately developing and/or implementing BMPs that achieve



1 BAT/BCT in violation of the Industrial Permit is a separate and distinct violation of  
2 Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3 163. By committing the acts and omissions alleged above, Defendants are subject  
4 to an assessment of civil penalties for each and every violation of the CWA occurring  
5 from June 27, 2009 to the present pursuant to Sections 309(d) and 505 of the CWA, 33  
6 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for  
7 Inflation, 40 C.F.R. §12.4.

8 164. An action for injunctive relief under the CWA is authorized by 33 U.S.C. §  
9 1365(a). Continuing commission of the acts and omissions alleged above would  
10 irreparably harm Plaintiff and the citizens of the State of California, for which harm  
11 they have no plain, speedy, or adequate remedy at law.

12 Wherefore, Plaintiff prays judgment against the Defendants as set forth hereafter.

13 **B. California Metals 636 Front Facility**

14 165. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

15 166. Plaintiff is informed and believes, and thereon alleges that Defendants have  
16 failed to develop and/or implement BMPs that achieve compliance with BAT/BCT  
17 requirements of the Industrial Permit and the CWA.

18 167. Sampling of the California Metals 636 Front Facility's storm water  
19 discharges as well as CERF's observations and photographs of the California Metals  
20 636 Front Facility demonstrate that the California Metals Owners and/or Operators have  
21 not developed and/or implemented BMPs that meet the standards of BAT/BCT. Thus,  
22 the California Metals Owners and/or Operators are in violation of Effluent Limitation  
23 (B)(3) of the Industrial Permit.

24 168. Plaintiff is informed and believes and thereon alleges that Defendants have  
25 been in daily and continuous violation of the BAT/BCT requirements of the Industrial  
26 Permit and the CWA every day since at least June 27, 2009.

27 169. Plaintiff is informed and believes and thereon alleges that Defendants'  
28 violations of the Industrial Permit Effluent Limitations and the CWA are ongoing.

1 170. Defendants will continue to be in violation every day the California Metals  
2 636 Front Facility operates without adequately developing and/or implementing BMPs  
3 that achieve BAT/BCT to prevent or reduce pollutants associated with industrial activity  
4 in storm water discharges at the California Metals 636 Front Facility.

5 171. Every day that Defendants operate the California Metals 636 Front Facility  
6 without adequately developing and/or implementing BMPs that achieve BAT/BCT in  
7 violation of the Industrial Permit is a separate and distinct violation of Section 301(a) of  
8 the CWA, 33 U.S.C. § 1311(a).

9 172. By committing the acts and omissions alleged above, Defendants are subject  
10 to an assessment of civil penalties for each and every violation of the CWA occurring  
11 from June 27, 2009 to the present pursuant to Sections 309(d) and 505 of the CWA, 33  
12 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for  
13 Inflation, 40 C.F.R. §12.4.

14 173. An action for injunctive relief under the CWA is authorized by 33 U.S.C. §  
15 1365(a). Continuing commission of the acts and omissions alleged above would  
16 irreparably harm Plaintiff and the citizens of the State of California, for which harm  
17 they have no plain, speedy, or adequate remedy at law.

18 Wherefore, Plaintiff prays judgment against the Defendants as set forth hereafter.

19  
20 **THIRD CAUSE OF ACTION**

21 **Failure to Develop and/or Implement an Adequate**  
22 **Storm Water Pollution Prevention Plan**  
23 **in Violation of the Industrial Permit and Clean Water Act**  
**(Violations of 33 U.S.C. §§ 1311, 1342)**

24 **A. California Metals 297 S. Marshall Facility**

25 174. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

26 175. Plaintiff is informed and believes, and thereon alleges that Defendants have  
27 failed to develop and/or implement an adequate SWPPP for the California Metals 297 S.  
28

1 Marshall Facility that meets the requirements set out in Section A and Provision E of the  
2 Industrial Permit.

3 176. Defendants have been in violation of the SWPPP requirements every day  
4 since at least June 27, 2009.

5 177. Defendants' violations of the Industrial Permit and the CWA are ongoing.

6 178. Defendants will continue to be in violation of the SWPPP requirements  
7 every day the California Metals 297 S. Marshall Facility operates with an inadequately  
8 developed and/or implemented SWPPP for the California Metals 297 S. Marshall  
9 Facility.

10 179. Each day that Defendants operate the California Metals 297 S. Marshall  
11 Facility without developing and/or implementing an adequate SWPPP is a separate and  
12 distinct violation of Section 301(a) of the CWA 33 U.S.C. §1311(a).

13 180. By committing the acts and omissions alleged above, Defendants are subject  
14 to an assessment of civil penalties for each and every violation of the CWA occurring  
15 from June 27, 2009 to the present pursuant to Sections 309(d) and 505 of the CWA, 33  
16 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for  
17 Inflation, 40 C.F.R. §12.4.

18 181. An action for injunctive relief under the CWA is authorized by 33 U.S.C. §  
19 1365(a). Continuing commission of the acts and omissions alleged above would  
20 irreparably harm Plaintiff and the citizens of the State of California, for which harm  
21 they have no plain, speedy, or adequate remedy at law.

22 Wherefore, Plaintiff prays judgment against the Defendants as set forth hereafter.

23 **B. California Metals 636 Front Facility**

24 182. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

25 183. Plaintiff is informed and believes, and thereon alleges that Defendants have  
26 failed to develop and/or implement an adequate SWPPP for the California Metals 636  
27 Front Facility that meets the requirements set out in Section A and Provision E of the  
28 Industrial Permit.

1 184. Defendants have been in violation of the SWPPP requirements every day  
2 since at least June 27, 2009.

3 185. Defendants' violations of the Industrial Permit and the CWA are ongoing.

4 186. Defendants will continue to be in violation of the SWPPP requirements  
5 every day the California Metals 636 Front Facility operates with an inadequately  
6 developed and/or implemented SWPPP for the California Metals 636 Front Facility.

7 187. Each day that Defendants operate the California Metals 636 Front Facility  
8 without developing and/or implementing an adequate SWPPP is a separate and distinct  
9 violation of Section 301(a) of the CWA 33 U.S.C. §1311(a).

10 188. By committing the acts and omissions alleged above, Defendants are subject  
11 to an assessment of civil penalties for each and every violation of the CWA occurring  
12 from June 27, 2009 to the present pursuant to Sections 309(d) and 505 of the CWA, 33  
13 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for  
14 Inflation, 40 C.F.R. §12.4.

15 189. An action for injunctive relief under the CWA is authorized by 33 U.S.C. §  
16 1365(a). Continuing commission of the acts and omissions alleged above would  
17 irreparably harm Plaintiff and the citizens of the State of California, for which harm  
18 they have no plain, speedy, or adequate remedy at law.

19 Wherefore, Plaintiff prays judgment against the Defendants as set forth hereafter.

20 **FOURTH CAUSE OF ACTION**

21  
22 **Failure to Develop and/or Implement an**  
23 **Adequate Monitoring and Reporting Program**  
24 **In Violation of the Industrial Permit and the Clean Water Act**  
**(Violations of 33 U.S.C. §§ 1311, 1342)**

25 **A. California Metals 297 S. Marshall Facility**

26 190. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

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1 191. Plaintiff is informed and believes, and thereon alleges that Defendants have  
2 failed to develop and/or implement an adequate M&RP for the California Metals 297 S.  
3 Marshall Facility as required by Section B and Provision E(3) of the Industrial Permit.

4 192. Plaintiff is informed and believes, and thereon alleges, that Defendants  
5 conditions at the California Metals 297 S. Marshall Facility, as determined via sampling  
6 of storm water discharges from the California Metals 297 S. Marshall Facility, and the  
7 annual reports submitted by the California Metals Owners and/or Operators all  
8 demonstrate that the California Metals 297 S. Marshall Facility has not developed  
9 and/or implemented an adequate M&RP that meets the requirements of the Industrial  
10 Permit in violation of Section B of the Industrial Permit.

11 193. Plaintiff is informed and believes, and thereon alleges that Defendants have  
12 failed and continue to fail to collect samples from all discharge points during sampled  
13 storm events in violation of Section B(5) of the Industrial Permit.

14 194. Plaintiff is informed and believes, and thereon alleges that Defendants have  
15 failed and continue to fail to identify inadequacies in their SWPPP and their BMPs in  
16 violation of Section B(2) of the Industrial Permit.

17 195. Defendants' violations of the Industrial Permit and the CWA are ongoing.

18 196. Defendants will continue to be in violation of the Industrial Permit and the  
19 CWA each day the California Metals 297 S. Marshall Facility operates with an  
20 inadequately developed and/or implemented M&RP.

21 197. Each day Defendants operate the California Metals 297 S. Marshall Facility  
22 without developing and/or implementing an adequate M&RP for the California Metals  
23 297 S. Marshall Facility is a separate and distinct violation of Section 301(a) of the  
24 CWA, 33 U.S.C. §1311(a).

25 198. By committing the acts and omissions alleged above, Defendants are subject  
26 to an assessment of civil penalties for each and every violation of the CWA occurring  
27 from June 27, 2009 to the present pursuant to Sections 309(d) and 505 of the CWA, 33  
28 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for

1 Inflation, 40 C.F.R. §12.4.

2 199. An action for injunctive relief under the CWA is authorized by 33 U.S.C. §  
3 1365(a). Continuing commission of the acts and omissions alleged above would  
4 irreparably harm Plaintiff and the citizens of the State of California, for which harm  
5 they have no plain, speedy, or adequate remedy at law.

6 Wherefore, Plaintiff prays judgment against the Defendants as set forth hereafter.

7 **B. California Metals 636 Front Facility**

8 200. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

9 201. Plaintiff is informed and believes, and thereon alleges that Defendants have  
10 failed to develop and/or implement an adequate M&RP for the California Metals 636  
11 Front Facility as required by Section B and Provision E(3) of the Industrial Permit.

12 202. Plaintiff is informed and believes, and thereon alleges, that Defendants  
13 conditions at the California Metals 636 Front Facility, as determined via sampling of  
14 storm water discharges from the California Metals 636 Front Facility, and the annual  
15 reports submitted by the California Metals Owners and/or Operators all demonstrate that  
16 the California Metals 636 Front Facility has not developed and/or implemented an  
17 adequate M&RP that meets the requirements of the Industrial Permit in violation of  
18 Section B of the Industrial Permit.

19 203. Plaintiff is informed and believes, and thereon alleges that Defendants have  
20 failed and continue to fail to collect samples from all discharge points during sampled  
21 storm events in violation of Section B(5) of the Industrial Permit.

22 204. Plaintiff is informed and believes, and thereon alleges that Defendants have  
23 failed and continue to fail to identify inadequacies in their SWPPP and their BMPs in  
24 violation of Section B(2) of the Industrial Permit.

25 205. Defendants' violations of the Industrial Permit and the CWA are ongoing.

26 206. Defendants will continue to be in violation of the Industrial Permit and the  
27 CWA each day the California Metals 636 Front Facility operates with an inadequately  
28 developed and/or implemented M&RP.

207. Each day Defendants operate the California Metals 636 Front Facility without developing and/or implementing an adequate M&RP for the California Metals 636 Front Facility is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §1311(a).

208. By committing the acts and omissions alleged above, Defendants are subject to an assessment of civil penalties for each and every violation of the CWA occurring from June 27, 2009 to the present pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §12.4.

209. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.

Wherefore, Plaintiff prays judgment against the Defendants as set forth hereafter.

### **FIFTH CAUSE OF ACTION**

#### **Failure to Conduct Required Rain Event Sampling in Violation of the Industrial Permit**

##### **A. California Metals 297 S. Marshall Facility**

210. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

211. Plaintiff is informed and believes, and thereon alleges, that the Defendants are in violation of Industrial Permit Section B(7) and B(5) by failing to collect at least two samples of storm water runoff, including one set of samples during the first storm event of the wet season.

212. Plaintiff is informed and believes, and thereon alleges, that Defendants failed to collect any samples during the 2010-2011 wet season, and failed to collect two samples during the 2009-2010 and 2013-2014 wet seasons.

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1        213. Information available to CERF indicates that over 30 qualifying rain events  
2 occurred in 2009-2010, 17 qualifying rain events in 2010-2011, and 12 qualifying rain  
3 events in the 2013-2014 wet seasons.

4        214. Defendants have been in violation of the Industrial Permit and the CWA for  
5 each day the California Metals 297 S. Marshall Facility operates without sampling as  
6 required by the Industrial Permit.

7        215. By committing the acts and omissions alleged above, Defendants are subject  
8 to an assessment of civil penalties for each and every violation of the CWA occurring  
9 from June 27, 2009 to the presents, pursuant to Sections 309(d) and 505 of the CWA, 33  
10 U.S.C. §§1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for  
11 Inflation, 40 C.F.R. §12.4.

12        216. An action for injunctive relief under the CWA is authorized by 33 U.S.C.  
13 §1365(a). Continuing commission of the omissions alleged above would irreparably  
14 harm the Plaintiff and the citizens of the State of California, for which harm they have  
15 no plain, speedy, or adequate remedy at law.

16        Wherefore, Plaintiff prays judgment against the Defendants as set forth hereafter.

17        **B. California Metals 636 Front Facility**

18        217. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

19        218. Plaintiff is informed and believes, and thereon alleges, that the Defendants  
20 are in violation of Industrial Permit Section B(7) and B(5) by failing to collect at least  
21 two samples of storm water runoff, including one set of samples during the first storm  
22 event of the wet season.

23        219. Plaintiff is informed and believes, and thereon alleges, that Defendants  
24 failed to collect any samples during the 2010-2011 wet season, and failed to collect two  
25 samples during the 2009-2010 and 2013-2014 wet seasons.

26        220. Information available to CERF indicates that over 30 qualifying rain events  
27 occurred in 2009-2010, 17 qualifying rain events in 2010-2011, and 12 qualifying rain  
28 events in the 2013-2014 wet seasons.



221. Defendants have been in violation of the Industrial Permit and the CWA for each day the California Metals 636 Front Facility operates without sampling as required by the Industrial Permit.

222. By committing the acts and omissions alleged above, Defendants are subject to an assessment of civil penalties for each and every violation of the CWA occurring from June 27, 2009 to the present pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §12.4.

223. An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Continuing commission of the omissions alleged above would irreparably harm the Plaintiff and the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.

Wherefore, Plaintiff prays judgment against the Defendants as set forth hereafter.

### **SIXTH CAUSE OF ACTION**

#### **Failure to Complete and/or Submit Reports in Violation of the Industrial Permit**

##### **A. California Metals 297 S. Marshall Facility**

224. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

225. Plaintiff is informed and believes, and thereon alleges, that Defendants have failed to complete and/or submit annual reports to the Regional Board in violation of Section B(14) of the Industrial Permit.

226. Plaintiff is informed and believes, and thereon alleges, that Defendants' annual reports did not meet the monitoring and reporting requirements of the Industrial Permit in violation of Section B(13) and B(14) of the Industrial Permit.

227. Plaintiff is informed and believes, and thereon alleges, that the Defendants' annual reports were inaccurate and/or did not include a complete Annual Comprehensive Site Evaluation in violation of Section A(9) of the Industrial Permit.

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1        228. Plaintiff is informed and believes, and thereon alleges, that Defendants'  
2 annual reports were inaccurate and stated that the SWPPP's BMPs address existing  
3 potential pollutant sources when they did not, in violation of the Industrial Permit  
4 Section B.

5        229. Plaintiff is informed and believes, and thereon alleges, that Defendants'  
6 annual reports were false and stated that the SWPPP was up to date when it was not, in  
7 violation of Section B of the Industrial Permit.

8        230. Plaintiff is informed and believes, and thereon alleges, that Defendants  
9 failed to submit a written report identifying what additional BMPs will be implemented  
10 to achieve Water Quality Standards even though the Defendants discharge exceeded  
11 receiving Water Quality Standards, in violation of Receiving Water Limitations C(3)  
12 and C(4) of the Industrial Permit.

13        231. Plaintiff is informed and believes, and thereon alleges, that Defendants'  
14 discharges of contaminated storm water are causing or contributing to exceedances of  
15 applicable Water Quality Standards contained in a Statewide Water Quality Control  
16 Plan, and/or the discharge prohibitions set forth in the Chapter 3 of the Basin Plan, in  
17 violation of Receiving Water Limitation B(2) of the Industrial Permit.

18        232. Defendants have been in violation of the Industrial Permit prohibitions each  
19 day the California Metals 297 S. Marshall Facility operates without reporting as  
20 required by the Industrial Permit.

21        233. Defendants' violations of the Industrial Permit and the CWA are ongoing.

22        234. Every day the Defendants operate the California Metals 297 S. Marshall  
23 Facility without reporting as required by the Industrial Permit is a separate and distinct  
24 violation of the Industrial Permit and Section 301(a) of the Clean Water Act, 33 U.S.C.  
25 §1311(a).

26        235. Defendants have been in daily and continuous violation of the Industrial  
27 Permit's reporting requirements every day since at least June 27, 2009.

28        /././

1  
2 236. By committing the acts and omissions alleged above, Defendants are subject  
3 to an assessment of civil penalties for each and every violation of the CWA occurring  
4 from June 27, 2009 to the present pursuant to Sections 309(d) and 505 of the CWA, 33  
5 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for  
6 Inflation, 40 C.F.R. §12.4.

7 237. An action for injunctive relief under the CWA is authorized by 33 U.S.C. §  
8 1365(a). Continuing commission of the acts and omissions alleged above would  
9 irreparably harm Plaintiff and the citizens of the State of California, for which harm  
10 they have no plain, speedy, or adequate remedy at law.

11 Wherefore, Plaintiff prays judgment against the Defendants as set forth hereafter.

12 **B. California Metals 636 Front Facility**

13 238. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

14 239. Plaintiff is informed and believes, and thereon alleges, that Defendants have  
15 failed to complete and/or submit annual reports to the Regional Board in violation of  
16 Section B(14) of the Industrial Permit.

17 240. Plaintiff is informed and believes, and thereon alleges, that Defendants'  
18 annual reports did not meet the monitoring and reporting requirements of the Industrial  
19 Permit in violation of Section B(13) and B(14) of the Industrial Permit.

20 241. Plaintiff is informed and believes, and thereon alleges, that Defendants'  
21 annual reports were inaccurate and/or did not include a complete Annual  
22 Comprehensive Site Evaluation in violation of Section A(9) of the Industrial Permit.

23 242. Plaintiff is informed and believes, and thereon alleges, that Defendants'  
24 annual reports were inaccurate and stated that the SWPPP's BMPs address existing  
25 potential pollutant sources when they did not, in violation of Section B of the Industrial  
26 Permit.

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1        243. Plaintiff is informed and believes, and thereon alleges, that Defendants'  
2 annual reports were false and stated that the SWPPP was up to date when it was not, in  
3 violation of Section B of the Industrial Permit.

4        244. Plaintiff is informed and believes, and thereon alleges, that Defendants  
5 failed to submit a written report identifying what additional BMPs will be implemented  
6 to achieve water quality standards even though the Defendants discharge exceeded  
7 receiving water quality standards, in violation of Receiving Water Limitations C(3) and  
8 C(4) of the Industrial Permit.

9        245. Plaintiff is informed and believes, and thereon alleges, Defendants'  
10 discharges of contaminated storm water are causing or contributing to exceedances of  
11 applicable water quality standards contained in a Statewide Water Quality Control Plan,  
12 and/or the discharge prohibitions set forth in the Chapter 3 of the Basin Plan, in  
13 violation of Receiving Water Limitation B(2) of the Industrial Permit.

14        246. Defendants have been in violation of the Industrial Permit prohibitions each  
15 day the California Metals 636 Front Facility operates without reporting as required by  
16 the Industrial Permit.

17        247. Defendants' violations of the Industrial Permit and the CWA are ongoing.

18        248. Every day the Defendants operate the California Metals 636 Front Facility  
19 without reporting as required by the Industrial Permit is a separate and distinct violation  
20 of the Industrial Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).

21        249. Defendants have been in daily and continuous violation of the Industrial  
22 Permit's reporting requirements every day since at least June 27, 2009.

23        250. By committing the acts and omissions alleged above, that Defendants are  
24 subject to an assessment of civil penalties for each and every violation of the CWA  
25 occurring from June 27, 2009 to the present pursuant to Sections 309(d) and 505 of the  
26 CWA, 33 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties  
27 for Inflation, 40 C.F.R. §12.4.

28        /./.



251. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.

Wherefore, Plaintiff prays judgment against the Defendants as set forth hereafter.

## **VII. RELIEF REQUESTED**

252. Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

- a. A Court order declaring Defendants to have violated and to be in violation of Section 301(a) of the CWA 33 U.S.C. § 1311(a) for their unlawful discharges of pollutants from the California Metals 297 S. Marshall Avenue Facility in violation of the substantive and procedural requirements of the Industrial Permit;
- b. A Court order declaring Defendants to have violated and to be in violation of Section 301(a) of the CWA 33 U.S.C. § 1311(a) for their unlawful discharges of pollutants from the California Metals 636 Front Street Facility in violation of the substantive and procedural requirements of the Industrial Permit;
- c. A Court order enjoining the Defendants from violating the substantive and procedural requirements of the Industrial Permit;
- d. A Court order assessing civil monetary penalties of \$37,500 per day per violation for each violation of the CWA at the California Metals 297 S. Marshall Avenue Facility occurring since June 27, 2009, as permitted by 33 U.S.C. § 1319(d) and Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4;
- e. A Court order assessing civil monetary penalties of \$37,500 per day per violation for each violation of the CWA at the California Metals 636 Front Street Facility occurring since June 27, 2009, as permitted by 33 U.S.C. § 1319(d) and Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4;
- f. A Court order requiring Defendants to take appropriate actions to restore the quality of waters impaired by their activities;

1 g. A Court order awarding CERF its reasonable costs of suit, including  
2 attorney, witness, expert, and consultant fees, as permitted by Section 505(d) of the  
3 Clean Water Act, 33 U.S.C. § 1365(d);

4 h. Any other relief as this Court may deem appropriate.  
5

6 Dated: February 20, 2015

Respectfully submitted,

8 COAST LAW GROUP LLP  
9

10 By: s/Marco A. Gonzalez  
11 MARCO A. GONZALEZ  
12 Attorneys for Plaintiff  
13 COASTAL ENVIRONMENTAL  
14 RIGHTS FOUNDATION  
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